OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Joe Kunschik, Commissioner
Bureau of Labor Statistics
Austin, Texas

Dear Sir:

Opinion No. 0-3356
Re: Is a private, non-profit corporation organized under the laws of the State of Texas for religious, charitable, benevolent and educational purposes required to obtain emigrant agency license under the provisions of S. B. No. 127, Acts of the 41st Leg., 1929, 2nd C. S., p. 203?

Your written request, addressed to this department, dated April 3, 1941, requesting an opinion has been received and considered.

We quote from your letter:

"We shall appreciate your opinion as to whether a private, non-profit corporation organized under the laws of the State of Texas for religious, charitable, benevolent and educational purposes would be required to obtain an emigrant agency license before engaging in the operation of an emigrant agency.

"This corporation proposes to charge neither the employee nor the employer any fee for procuring employment. It contends that because it is charging no fee for its services it falls within the exceptions mentioned in Article 5209, R. C. S., of Texas, * * *.

"It is contended that Article 5209, R. C. S., must be read into the Emigrant Agency Law because the Emigrant Agency Law appears in the same chapter of the statutes as the Employment Agency Law and because Section 8 of the Emigrant Agency Law provides that the Emigrant

Agency Act shall be cumulative of the Employment Agency Law.

"In other words, the question may be boiled down to this proposition: Do the exceptions mentioned in Article 5209, R. C. S., apply to emigrant agents or do they apply solely to employment agents transacting an intra-state business?"

The "Employment Agency Law" is set out in Chapter 13 of Title 83 of the Revised Civil Statutes of Texas, 1925, being Articles 5208 to 5221, inclusive.

Article 5208 defines an employment agent. Article 5209, dealing with exceptions to Article 5208, reads:

"The provisions of this chapter shall not apply to agents who charge a fee of not more than two dollars for registration only for procuring employment for school teachers; nor to any department or bureau maintained by this State, the United States Government, or any municipal government of this State, nor to any person, firm, partnership, association of persons or corporation or any officer, or employee thereof engaged in obtaining or soliciting help from him, them or it when no fees are charged directly or indirectly the applicant for help or the applicant for employment; nor to farmers and stockraisers acting jointly or severally in securing laborers for their own use where no fee is collected or charged directly or indirectly, nor to any association or corporation chartered under the laws of Texas conducting a free employment bureau or agency."

The "Emigrant Agents Law" was enacted by Senate Bill No. 127, Acts of the 41st Legislature, 1929, Second Called Session, Page 203. It is found in Vernon's Revised Civil Statutes as Article 5521-a-1.

Section 1 of Senate Bill No. 127 provides:

"Section 1. The term 'emigrant agent' as used in this Act means every person, firm, corporation or association of persons engaged in

the business of hiring, enticing, or soliciting laborers in this State to be employed beyond the limits of this State and is also meant to include every person, firm, partnership, corporation or association of persons maintaining an office to hire, entice, or solicit laborers to be employed beyond the limits of this State; and is also meant to include every person who, as an independent contractor or otherwise than as an agent of a duly licensed emigrant agent procures, or undertakes to procure, or assist in procuring laborers for an emigrant agent; and every emigrant agent shall be termed and held to be doing business as such in each and every County wherein he, in person, or through an agent, hires, entices or solicits any laborer to be employed beyond the limits of the State."

A part of Section 2 of the above Act, reads:

"Sec. 2. Each emigrant agent shall, before operating in Texas, secure a State license as such, on application therefor to the Commissioner of Labor Statistics of the State of Texas. * * *."

Section 3 of the same Act provides:

"Sec. 3. Any person, firm, association of persons or corporation who shall engage in the business of an emigrant agent in any county in this State without having first filed with the Commissioner of Labor Statistics of the State of Texas, an application for license as emigrant agent as above provided, and/or without having first paid all state and county occupation taxes and annual license fee as provided by law or without having first secured a state license as above provided, or without having first filed certified copy of his state license with the Tax Collector of such county as above provided, and/or who does not file monthly reports as provided by this Act, and/or who shall engage in the business of an emigrant agent in any county in this State without first

having designated such county as one of the counties in which he proposes to do such business in his original or amended application to the Commissioner of Labor Statistics of Texas, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding $500.00, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment."

Section 7 of the same Act also deals with the scope of said Senate Bill No. 127 but will not be copied here.

Section 8 of said Senate Bill No. 127 provides:

"Sec. 8. The provisions of this Act shall be cumulative of the employment agency laws of the State of Texas and the employment agency Laws aforesaid, shall be where consistent, applicable to the provisions of this Act." (Underscoring ours)

The Supreme Court of Texas in the case of State v. Laredo Ice Co., et al, 73 S. W. 951, in construing the effect of a cumulative provision similar to that in Section 8, supra, said:

"The fourteenth section of the act of 1899 concerning trusts and monopolies is in this language: 'The provisions of the foregoing sections, and the fines and penalties provided for violations of this act shall be held and construed to be cumulative of all laws now in force in this state.' Counsel for appellees earnestly contend that the effect of this provision is to consolidate and to make one law of the act of 1895 and the act of 1899, and thereby to give exemption from prosecution under the law of 1899 to those persons who are exempted by the provisions of the law of 1895. The term 'cumulative' indicates an harmonious coexistence and co-operation, rather than a consolidation or two things into one. An amendment to a statute is not 'cumulative' because it repeals and takes the place of the part of the law that it

> amends, thereby becoming a part of the law amended. It is true that, in seeking the meaning of language used in a statute, it is proper to consider all of the acts of the same legislative body which are in pari materia, because 'it is supposed that there has been no change in the legislative intent and purpose,' unless it is manifested by some change of language. Sutherland, Stat. Constr. §283. But this is a rule of construction, merely, and does not constitute each act a part of every other act on the same subject. Laws which are said to be in pari materia are parts of a common system or policy, but are not one and the same law. * * *."
> (Underscoring ours)

An examination of Senate Bill No. 127 shows that it was evidently passed to regulate and be applicable to instances where the prospective employee or emigrant is hired, enticed or solicited to be employed without the State of Texas. The Employment Agents Law seems to have been designed to regulate and be applicable to instances where the prospective employee is to work in the State of Texas. There is some similarity in several provisions of the two Acts.

Another rule of statutory construction which we believe applicable in answering your proposition is stated in the case of State v. Standard Oil Co., 130 Tex. 313, 107 S. W. (2d) 550, where the court says:

> "We are to interpret the language used in a manner to make all relevant laws harmonious, if we can, and in a manner consistent with the public policy of the State, as well as in the light of the evils sought to be remedied by the legislation before us."

See also 39 Texas Jurisprudence 171 and cases cited.

The court in Karr v. Baldwin, (Dist. Ct.) 57 Fed. (2d) 252, in upholding the Employment Agents Law against an unconstitutionality attack leveled at the provisions of Article 5209, as being arbitrary exceptions, made this pertinent statement, which we think is applicable:

> "The farmer or stockraiser or the free bureau make no charge. They seek immediate

> assistance. There is every reason why there should be no fraud or overreaching in their solicitations or placings. The difference between a gratis service and a pay service is recognized in such cases as Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 31 Sup. Ct. 337, 55 L. Ed. 369, Annotated Cases 912C 160, (and citing many other cases) * * *. The State has a right to confine its restrictions to those classes which it deems need them. If the law hits an evil where it is most felt the prohibition need not be all-embracing."

We can find nothing in the definition of an emigrant agent or the other provisions of Senate Bill No. 127 which would indicate that the Act was passed to apply to the type of institutions referred to in your inquiry. If the institution's true purposes are those of a non-profit, charitable, religious, benevolent and educational institution then its "business" could hardly be said to come within the provisions of Section 1 of the Emigrant Agency Act. This we think is true even though in carrying out its real and primary purposes, it incidentally rendered some service which an Emigrant Agent might perform. In view of the history of the services rendered by such institutions, which the Legislature must have known at the time of the passage of the Act, and the fact that the Legislature in the "Emigrant Agents Act," itself, provides in Section 8 that "the provisions of this Act shall be cumulative of the Employment Agency Law of the State of Texas and the Employment Agency Law aforesaid shall be where consistent, applicable to the provisions of this Act," we do not believe the Legislature intended to change its previously declared public policy so as to include such institutions strictly within the scope of Senate Bill No. 127. We do not believe the evil aimed at and sought to be regulated by the provisions of Senate Bill No. 127 included the helpful and incidental services rendered by a non-profit, charitable, religious, educational and benevolent institution. Neither can we say that the provisions of Article 5209 of the Employment Agent Act are inconsistend with the definition and provisions of the Emigrant Agents Act.

We believe that with due regard given to the exceptions as contained in Article 5209 as being applicable to the provisions of Senate Bill No. 127, the "Employment Agents Act" and the "Emigrant Agents Act" can be construed harmoniously together and can

be properly administered and enforced so as to regulate the evils sought to be controlled by the respective Acts.

For all of the foregoing reasons, it is our opinion, and you are so advised, in answer to your question, that the exceptions of Article 5209, Revised Civil Statutes, 1925, are applicable to and are proper exceptions to the provisions of Senate Bill No. 127, passed by the Acts of the 41st Legislature, Second Called Session, 1929, Page 203, and the institution inquired about, under the facts in your inquiry, would not be required to obtain an "Emigrant Agents" license.

We trust that we have fully answered your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED MAY 2, 1941

FIRST ASSISTANT
ATTORNEY GENERAL

By Harold McCracken
Harold McCracken
Assistant

HM:RS

APPROVED
OPINION
COMMITTEE
BY
CHAIRMAN